

AMENDED IN ASSEMBLY AUGUST 26, 2002
AMENDED IN ASSEMBLY AUGUST 19, 2002
AMENDED IN ASSEMBLY AUGUST 15, 2002
AMENDED IN ASSEMBLY AUGUST 12, 2002
AMENDED IN ASSEMBLY JUNE 28, 2001
AMENDED IN SENATE MAY 1, 2001
AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 789

Introduced by Senator Kuehl

February 23, 2001

An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 789, as amended, Kuehl. Civil actions.

Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, as specified, is subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim.

Existing law provides that an appeal may be taken directly from an order granting or denying a special motion to strike to the court of appeal, as specified. Existing law also requires any party who files or

opposes a special motion to strike to promptly transmit various related documents to the Judicial Council by e-mail or facsimile, and requires the Judicial Council to maintain a public record of this information for at least 3 years.

This bill would provide that certain actions are not subject to a special motion to strike, as specified. ~~The bill would provide specified procedures to obtain relief from any stay of proceedings related to the appeal of the denial of a special motion to strike.~~

This bill would delete an obsolete provision relating to the Judicial Council's duty to report to the Legislature on these special motions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 425.16 of the Code of Civil Procedure
2 is amended to read:

3 425.16. (a) The Legislature finds and declares that there has
4 been a disturbing increase in lawsuits brought primarily to chill the
5 valid exercise of the constitutional rights of freedom of speech and
6 petition for the redress of grievances. The Legislature finds and
7 declares that it is in the public interest to encourage continued
8 participation in matters of public significance, and that this
9 participation should not be chilled through abuse of the judicial
10 process. To this end, this section shall be construed broadly.

11 (b) (1) A cause of action against a person arising from any act
12 of that person in furtherance of the person's right of petition or free
13 speech under the United States or California Constitution in
14 connection with a public issue shall be subject to a special motion
15 to strike, unless the court determines that the plaintiff has
16 established that there is a probability that the plaintiff will prevail
17 on the claim.

18 (2) In making its determination, the court shall consider the
19 pleadings and supporting and opposing affidavits stating the facts
20 upon which the liability or defense is based.

21 (3) If the court determines that the plaintiff has established a
22 probability that he or she will prevail on the claim, neither that
23 determination nor the fact of that determination shall be
24 admissible in evidence at any later stage of the case, and no burden

1 of proof or degree of proof otherwise applicable shall be affected
2 by that determination.

3 (c) In any action subject to subdivision (b), a prevailing
4 defendant on a special motion to strike shall be entitled to recover
5 his or her attorney's fees and costs. If the court finds that a special
6 motion to strike is frivolous or is solely intended to cause
7 unnecessary delay, the court shall award costs and reasonable
8 ~~attorneys'~~ attorney's fees to a plaintiff prevailing on the motion,
9 pursuant to Section 128.5.

10 (d) (1) This section does not apply to any of the following:

11 (A) Any enforcement action brought in the name of the people
12 of the State of California by the Attorney General, *a* district
13 attorney, or *a* city attorney, acting as a public prosecutor.

14 (B) Any action brought solely in the public interest or on behalf
15 of the general public if all of the following conditions exist:

16 (i) The plaintiff does not seek any relief greater than or different
17 from the relief sought for the general public or a class of which the
18 plaintiff is a member. A claim for ~~attorneys'~~ attorney's fees, costs,
19 or penalties does not constitute a greater or different relief for
20 purposes of this subparagraph.

21 (ii) The action, if successful, would enforce an important right
22 affecting the public interest, and would confer a significant
23 benefit, whether pecuniary or nonpecuniary, on the general public
24 or a large class of persons.

25 (iii) Private enforcement is necessary and ~~would place~~ *would place*
26 a disproportionate financial burden on the plaintiff in relation to
27 the plaintiff's stake in the matter.

28 (C) Any cause of action brought against a person primarily
29 engaged in the business of selling or leasing goods or services,
30 including, but not limited to, insurance, securities, or financial
31 instruments, arising from any statement or conduct by that person
32 if both of the following conditions exist:

33 (i) The statement or conduct consists of representations of fact
34 about ~~a~~ *that* person's or a business competitor's business
35 operations, goods, or services, that is made for the purpose of
36 obtaining approval for, promoting, or securing sales or leases of,
37 or commercial transactions in, the person's goods or services, or
38 the statement or conduct was made in the course of delivering the
39 person's goods or services.

(ii) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, notwithstanding that the conduct or statement concerns an important public issue.

(2) If any trial court denies a special motion to strike on the grounds that the cause of action is exempt pursuant to this subdivision, the stay and appeal provisions in subdivisions (g) and (i) do not apply.

(3) Subparagraphs ~~(A)~~ (B) and (C) of paragraph (1) do not apply to any of the following:

(A) Any person enumerated in subdivision (b) of Section 2 of Article 1 of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(B) Any action against any person or entity with respect to activities that involve the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(C) Any nonprofit organization that receives more than 50 percent of its annual revenue from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) As used in this section, “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue” includes any of the following:

(1) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.

(2) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.

1 (3) Any written or oral statement or writing made in a place
2 open to the public or a public forum in connection with an issue
3 of public interest.

4 (4) Any other conduct in furtherance of the exercise of the
5 constitutional right of petition or the constitutional right of free
6 speech in connection with a public issue or an issue of public
7 interest.

8 (f) The special motion may be filed within 60 days of the
9 service of the complaint or, in the court's discretion, at any later
10 time upon terms it deems proper. The motion shall be noticed for
11 hearing not more than 30 days after service unless the docket
12 conditions of the court require a later hearing.

13 (g) All discovery proceedings in the action shall be stayed upon
14 the filing of a notice of motion made pursuant to this section. The
15 stay of discovery shall remain in effect until notice of entry of the
16 order ruling on the motion. The court, on noticed motion and for
17 good cause shown, may order that specified discovery be
18 conducted notwithstanding this subdivision.

19 (h) For purposes of this section, "complaint" includes
20 "cross-complaint" and "petition," "plaintiff" includes
21 "cross-complainant" and "petitioner," and "defendant" includes
22 "cross-defendant" and "respondent."

23 (i) An order granting or denying a special motion to strike is
24 appealable under Section 904.1.

25 (j) (1) Any party who files a special motion to strike pursuant
26 to this section, and any party who files an opposition to a special
27 motion to strike, shall, promptly upon so filing, transmit to the
28 Judicial Council, by e-mail or facsimile, a copy of the
29 endorsed-filed caption page of the motion or opposition, a copy of
30 any related notice of appeal or petition for a writ, and a conformed
31 copy of any order issued pursuant to this section, including any
32 order granting or denying a special motion to strike, discovery, or
33 fees.

34 (2) The Judicial Council shall maintain a public record of
35 information transmitted pursuant to this subdivision for at least
36 three years, and may store the information on microfilm or other
37 appropriate electronic media.

38 SEC. 2. The provisions of this act are severable. If any
39 provision of this act or its application is held invalid, that invalidity

- 1 does not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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